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BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL )  
DEVELOPMENT PERMIT DENIED, IN )  
PART, BY KING COUNTY, H. A. )  
DABROE, )  
H. A. DABROE, )  
Appellant, )  
v. )  
KING COUNTY, )  
Respondent, )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )  
Intervenors. )

SHB No. 106

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the request for review of a substantial development permit issued by King County to H. A. Dabroe, came before the Shorelines Hearings Board, Walt Woodward (presiding officer), Mary Ellen McCaffree, Robert F. Hintz, Robert E. Beaty, the designee for the hearing of the

1 Association of Washington Counties, and Arden A. Olson, designee of Bert  
2 Cole, at a formal hearing in the King County Courthouse, Seattle,  
3 Washington, on April 18, 1974.

4 Appellant was represented by his attorney, Gordon A. Scraggin;  
5 respondent, King County, appearing through John E. Keegan, Deputy  
6 Prosecuting Attorney and intervenors, Washington State Department of  
7 Ecology and Attorney General appearing through Robert V. Jensen,  
8 Assistant Attorney General. Eugene Barker, Olympia court reporter,  
9 recorded the proceedings.

10 Witnesses were sworn and testified. Exhibits were admitted.  
11 Counsel for the parties made closing arguments.

12 The Board having considered the sworn testimony, exhibits, record and  
13 files herein, arguments of counsel and exceptions from appellant and  
14 respondent and the Board being fully advised in the premises, makes these

15 FINDINGS OF FACT

16 I.

17 In April, 1955, appellant, H. A. Dabroe, purchased Lot 27 within  
18 the Vashon Island abandoned military reservation in Section 2, Township 21  
19 North, Range 2 E.W.M., together with (qualified) tidelands of the second  
20 class in front thereof (Exhibit 11, Deed) in King County, State of  
21 Washington. Appellant moved onto Lot 28, then and since owned by him,  
22 adjoining Lot 27 on the west thereof, in 1952 when he started a  
23 continuing project of construction and improvement of the two said lots  
24 which front on the shoreline of Dalco Passage, Commencement Bay, Puget  
25 Sound, adjunct to Tahlequah Creek, Vashon Island, within King County,  
6 Washington. Appellant's residence is located on the easterly side of  
27 Lot 28 and a smaller residential house is located on Lot 27, both

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1 above high tide line.

2 II.

3 Appellant's described property extends steeply uphill from shoreline  
4 northerly to a curving county road running generally west to east  
5 along the north lines of Lots 27 and 28 and thence southerly to the  
6 shoreline some four hundred feet or so to the east. A sharp curving  
7 access road leads into appellant's property from the east off of  
8 said county road. Total width of the property involved (east to  
9 west) is approximately 258 feet and has a varying depth from the  
10 south shoreline to the county road at the north of approximately  
11 300 feet. At the time of commencement of appellant's construction  
12 and improvement of his property in 1952, and earlier, there existed  
13 a marshland on the northeast side of Lot 27 and extending east and  
14 over on a portion of the west side of Lot 26, adjacent to the east.  
15 At the northerly portion of this marshland a pond, generally referred  
16 to as a fish pond, existed for an unknown number of years prior to  
17 appellant's improvement projects and was drained by a meandering  
18 stream extending southerly over the east side of Lot 27 to the shore,  
19 exiting into the Puget Sound waters in a spreading fingers-like pattern  
20 to and over a large delta plain of the tideland in front of appellant's  
21 property. Prior to appellant's development projects the beach fronting  
22 his property was a Class II type sand and gravel beach, the uplands  
23 being sand, gravel and clay necessitating a retaining wall (east  
24 to west at the north of the buildings on appellant's property and  
25 south of the county road) to protect the property from slipping or  
6 sliding off the county road onto appellant's property.

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1 III.

2 Some years prior to appellant's purchase and commencement of  
3 improvement of his property in 1952 a breakwater of piling and plank-  
4 type bulkhead (breaking the action of waves but allowing water through  
5 onto the beach above and back) had been constructed, extending east  
6 to west on the shore in front of appellant's Lots 27 and 28 at approxi-  
7 mately the level of mean higher high water (11.9', USCGS datum).

8 Between 1955 and the summer of 1973, in a continuing bit by  
9 bit process, appellant commenced and completed construction and improve-  
10 ment work on his property (Lots 27 and 28) which included the following:

- 11 (1) Construction of a concrete retaining wall  
12 (east to west) between the rear of appellant's  
13 residence buildings and the county road to  
14 the north to prevent slippage from the  
15 county road and earth to the north onto his  
16 property at the rear of his residence buildings.
- 17 (2) Construction of a solid vertical face 8 feet  
18 high, 2 feet wide concrete bulkhead wall extending  
19 from west to east along a line some 45 feet  
20 seaward of the original wooden breakwater and  
21 enclosing a rectangular area in front of Lot 27  
22 some 50 feet long with the south seaward wall  
23 thereof being at a level some 6 feet lower than  
24 the original mean higher highwater line. This  
25 rectangular area extending out over the tideland  
water on the beach was first intended and used for  
a swimming pool and then was eventually filled in  
on the landward side thereof bringing the ground  
level up to the top of the surrounding bulkhead  
walls. This area was then surfaced and intended  
for an emergency "heliport" but covered with lawn  
planting. Extending some 15 feet seaward from the  
south wall of the heliport area two concrete  
groin walls (2'x10'x6") have been installed some  
25 feet apart.
- (3) Construction of a similar concrete wall extending  
from the south end of the east wall of the  
heliport area seaward approximately ten feet,  
being about eleven feet long, referred to as a wing

1 wall protecting the front or seaward side of a  
2 boat ramp. The second similar wing wall was  
3 constructed seaward some ten feet plus to the  
4 east of the first wing wall and extending  
5 northeasterly joining the east wall of said boat  
6 ramp structure.

7 (4) Construction of a five foot concrete culvert, confining  
8 and carrying the creek water from the above mentioned  
9 marshy area and pool area downhill under appellant's  
10 boathouse and boat ramp and exiting in a southeasterly  
11 direction into the waters of Puget Sound, altering  
12 the original flow of the creek and distribution of  
13 water and sediment over the delta plain of the  
14 tideland in front of appellant's property.

15 (5) Filling in of the aforementioned marshland (partly  
16 done by the owner of Lot 26 but assisted by  
17 appellant with respect to construction of the  
18 culvert and covering thereof) to accomplish, in part,  
19 drainage of appellant's property and to assist  
20 in control of mosquitoes.

#### 21 IV.

22 All of the construction and improvement work (excluding construction  
23 work on appellant's residence on the east side of Lot 28) described in  
24 Finding III above, was started and completed by and for appellant  
25 without having obtained any permit from King County or any other  
26 governmental agency. However, regarding construction that began in 1952  
27 or 1955 he did contact the King County Building Department and was told  
28 that he did not need a building permit because of the piecemeal nature of  
29 the project. While originally the beach fronted by appellant's property  
30 was a Class I beach and tideland area (rapidly diminishing from the  
31 shorelines of the State of Washington) it was at least a Class II beach  
32 prior to the construction and development work done by appellant as  
33 hereinabove described and disclosed by the record herein. Appellant's  
34 said development of his property has caused the beach in front thereof to

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1 deteriorate into a Class III beach by reason of: eliminating the natural  
2 backshore area and reducing the natural erosive characteristics of the  
3 shoreline site with extensive and substantial landfilling below the high  
4 water line; damaging fish (small pink salmon fry and chum), forcing them  
5 away from shallow waters adjacent to the beach out and around massive  
6 concrete bulkhead walls into deeper water where and while devoured and  
7 destroyed or diminished by larger fish predators; adversely affecting the  
8 aesthetic qualities of the beach and shoreline fronted by appellant's  
9 property by obliteration of the natural features of the original shore-  
10 line; substantially precluding or eliminating the public's right of  
11 enjoyment and use of the navigable waters fronted by appellant's property  
12 while adding to private use of the appellant; materially endangering  
13 natural development of the delta plain from the tideland fronted by  
14 appellant's property by altering sand and sediment movement as created  
15 by the natural action of the waves from the Sound and altering the course  
16 of natural drainage from the hillside landward.

17 V.

18 Appellant's fill and bulkheads, seawalls, wingwalls, groins,  
19 culvert and diversion of stream drainage of appellant's property, though  
20 accomplished on a bit by bit piecemeal basis over a period of  
21 approximately twenty years, was an ongoing project constituting a  
22 substantial development which is inconsistent with the policy section  
23 of the Shoreline Management Act (RCW 90.58.020) and the guidelines of  
24 the Department of Ecology.

25 VI.

Although some of the construction and other work listed in

1 Finding III above was undertaken by appellant prior to the effective  
2 date of the Shoreline Management Act (June 1, 1971) the same was unlawful  
3 because the appellant had not procured permits from King County or the  
4 Corps of Army Engineers, therefore, WAC 173-14-050 does not exempt  
5 appellant from compliance with the permit requirements of the Shoreline  
6 Management Act. Nor has appellant otherwise established any right of  
7 exemption from the permit requirements of the Shoreline Management Act.

8 VII.

9 In addition to being unlawful (per Finding VI above) a major  
10 proportion of the appellant's development, hereinabove described, was  
11 substantially carried forward and completed after December 4, 1969,  
12 (date of decision in Wilbur vs. Gallagher, 77 Wn.2d 306), therefore  
13 being inconsistent and in violation of the rights of the public. Such  
14 development includes the bulkhead seawall on the east, west and  
15 southerly sides of the helicopter area, the landfill within the helicopter  
16 area and the groins and the wingwalls and posts protecting the boat ramp.

17 VIII.

18 While removal of the "improvements" consisting of the aforementioned  
19 bulkhead walls, the helicopter area, seaward of high tide line, including  
20 the bulkhead seawalls on the east, west and southerly sides thereof, the  
21 groins, and the wingwalls protecting the boat ramp launching structure,  
22 might not, alone, restore the beach area and the delta plain seaward  
23 thereof, to its original condition prior to such construction and  
24 "improvements" of appellant's property, without restoration of the stream  
25 from the aforementioned fish pond and marshy area, to the prior condition  
of the beach, shoreline, and delta plain area hereinabove described, the

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1 continued existence of said concrete bulkheads, heliport area, seawalls,  
2 wingwalls, etc., as hereinabove described, together with fill behind the  
3 same, will, in terms of long time effects, materially and substantially  
4 alter and adversely affect the aquatic and marine life of the tideline  
5 area fronted by appellant's property and the use and enjoyment of the  
6 public of the (navigable water) displaced by appellant's landfill.

7 IX.

8 Any Conclusion of Law hereinafter recited which should be deemed  
9 to be a Finding of Fact is hereby adopted as such.

10 From the foregoing Findings of Fact, the Shorelines Hearings Board  
11 arrives at the following

12 CONCLUSIONS OF LAW

13 I.

14 The instant request for review was timely filed and the Shorelines  
15 Hearings Board has jurisdiction of this matter.

16 II.

17 The instant substantial development permit is consistent with  
18 RCW 90.58.020 and the guidelines of the Department of Ecology particularly  
19 with respect to protecting against adverse effects to . . . the waters  
20 of the State and their aquatic life, while protecting generally the  
21 public's right of the use and enjoyment of the navigable waters displaced  
22 by the appellant's property (Lots 27 and 28 as above described) and  
23 corollary rights incidental thereto.

24 III.

25 Any Finding of Fact which should be deemed a Conclusion of Law is  
hereby adopted as such.

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1 From these Conclusions, the Shorelines Hearings Board makes the  
2 following

3 ORDER

4 The substantial development permit granted by King County for  
5 improvement of appellant's property and beach development is sustained  
6 and the appellant's appeal therefrom, by way of request for review, is  
7 hereby dismissed and this matter is remanded to King County with  
8 directions to proceed with enforcement of abatement and removal of that  
9 part of appellant's construction and improvements and development projects  
10 placed below the line of ordinary high water of Puget Sound subsequent  
11 to December 4, 1969 and those projects placed on the uplands subsequent to  
12 June 1, 1971.

3 DONE at Lacey, Washington, this 25<sup>th</sup> day of June, 1974.

14 SHORELINES HEARINGS BOARD

15 Walt Woodward  
16 WALT WOODWARD, Chairman

17 Arden A. Olson  
18 ARDEN A. OLSON, Member

19 Robert E. Beaty  
20 ROBERT E. BEATY, Member

21 Robert F. Hintz  
22 ROBERT F. HINTZ, Member  
23  
24  
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